

**Amendment No. 2 to HB1793**

**Carter  
Signature of Sponsor**

**AMEND Senate Bill No. 1601\***

**House Bill No. 1793**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following as a new chapter:

**29-40-101.** As used in this chapter:

(1) "Abusive civil action" means a civil action filed by a plaintiff against a defendant with whom the plaintiff shares a civil action party relationship primarily to harass or maliciously injure the defendant and at least one (1) of the following factors are applicable:

(A) Claims, allegations, and other legal contentions made in the civil action are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

(B) Allegations and other factual contentions made in the civil action are without the existence of evidentiary support; or

(C) Issue or issues that are the basis of the civil action have previously been filed in one (1) or more other courts or jurisdictions by the same, and the actions have been litigated and disposed of unfavorably to the plaintiff;

(2) "Abusive civil action plaintiff" means a person who files a civil action that a court of record has determined to be an abusive civil action and against whom prefiling restrictions have been imposed pursuant to this chapter;

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(3) "Civil action" means a civil action, as defined in Rule 2 of the Tennessee rules of civil procedure;

(4) "Civil action defendant" means a person or persons against whom a civil action has been filed that a court of record has determined to be an abusive civil action and imposed prefilng restrictions against the abusive civil action plaintiff pursuant to this chapter;

(5) "Civil action party relationship" means the plaintiff commencing a civil action and the civil action defendant fall within one (1) of the following categories:

(A) Adults who are current or former spouses;

(B) Adults who live together or who have lived together;

(C) Adults who are dating or who have dated or who have or had a sexual relationship. As used in this subdivision (5)(C), "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context;

(D) Adults related by blood or adoption;

(E) Adults who are related or were formerly related by marriage; or

(F) Adult children of a person in a relationship that is described in subdivisions (5)(A)-(E); and

(6) "Harass or maliciously injure" means the civil action determined to be an abusive civil action was filed with the intent or was primarily designed to:

(A) Exhaust, deplete, impair, or adversely impact the civil action defendant's financial resources unless:

(i) Punitive damages are requested and appropriate; or

(ii) A change in the circumstances of the parties provides a good faith basis to seek a change to a financial award, support, or distribution of resources;

(B) Prevent or interfere with the ability of the civil action defendant to raise a child or children for whom the civil action defendant has legal custody in the manner the civil action defendant deems appropriate unless the civil action plaintiff has a lawful right to interfere and a good faith basis for doing so;

(C) Force, coerce, or attempt to force or coerce the civil action defendant to agree to or make adverse concessions concerning financial, custodial, support, or other issues when the issues in question have been previously litigated and decided in favor of the civil action defendant;

(D) Force, coerce, or attempt to force or coerce the civil action defendant to alter, engage in, or refrain from engaging in conduct when the conduct is lawful and is conduct in which the civil action defendant has the right to engage;

(E) Impair, or attempt to impair the health or well-being of the civil action defendant or a dependent of the civil action defendant;

(F) Prevent, interfere, or adversely impact the ability of the civil action defendant to pursue or maintain a livelihood or lifestyle at the same or better standard as the civil action defendant enjoyed prior to the filing of the action primarily for the purpose of harassing or maliciously injuring the civil action defendant; or

(G) Impair, diminish, or tarnish the civil action defendant's reputation in the community or alienate the civil action defendant's friends, colleagues,

attorneys, or professional associates by subjecting parties without knowledge of or not reasonably relevant to the civil action to unreasonably or unnecessarily complex, lengthy, or intrusive interrogatories or depositions.

**29-40-102.** This chapter shall only apply to a civil action filed by a plaintiff against a defendant or defendants with whom the plaintiff shares a civil action party relationship.

**29-40-103.**

(a) If a civil action is filed and the defendant to the action believes it to be an abusive civil action, the claim may be raised by the defendant:

- (1) In the answer to the civil action; or
- (2) By motion made at any time during the civil action.

(b) The court may, on its own motion, determine that a hearing pursuant to § 29-40-104 is necessary to determine if the civil action is an abusive civil action.

**29-40-104.**

(a) If the defendant to a civil action alleges, either by answer to the civil action or by motion made at any time the action is pending, that the action constitutes an abusive civil action and that the person filing the action is an abusive civil action plaintiff, the court shall conduct a hearing to determine the merits of the defendant's allegations.

(b) At the time set for the hearing on the alleged abusive civil action, the court shall hear all relevant testimony and may require any affidavits, documentary evidence, or other records the court deems necessary.

**29-40-105.**

At the hearing conducted pursuant to § 29-40-104, evidence of any of the following creates a rebuttable presumption that the civil action is an abusive civil action and that the person filing the action is an abusive civil action plaintiff and prefilings restrictions should be imposed upon the abusive civil action plaintiff:

(1) The same or substantially similar issues between the same or substantially similar civil action parties that are the subject of the alleged abusive civil action have been litigated against the civil action defendant within the past five (5) years in another court within the judicial district or another judicial district and the actions were dismissed on the merits or with prejudice against the civil action plaintiff;

(2) The alleged abusive civil action plaintiff has used the same or substantially similar issues that are the subject of the current civil action as the basis for an adverse complaint against the civil action defendant to a regulatory or licensing board and the regulatory or licensing board dismissed the complaint after a contested case hearing in compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(3) The alleged abusive civil action plaintiff has been sanctioned under Rule 11 of the Tennessee Rules of Civil Procedure or a similar rule or law in another state or the federal government for filing one (1) or more frivolous, vexatious, or abusive civil actions within the past ten (10) years of filing the current civil action alleged to be abusive and the previous frivolous, vexatious, or abusive civil actions involved the same or substantially the same issues between the same or substantially the same civil action parties; or

(4) A court of record in another judicial district has determined that a civil action filed against the civil action defendant was an abusive civil action and is under or has been under prefilling restrictions in that judicial district.

**29-40-106.**

(a) If the court finds by a preponderance of the evidence that a person filing a civil action is an abusive civil action plaintiff, and that any or all civil actions filed by the

abusive civil action plaintiff against the abusive civil action defendant that are pending before the court are abusive civil actions, the civil actions shall be dismissed.

(b) In addition to dismissal of any pending abusive civil action within the jurisdiction of the court, the court shall:

(1) Tax all costs of any abusive civil action pending in the court at the time of the court's finding pursuant to subsection (a) against the abusive civil action plaintiff;

(2) Award the civil action defendant reasonable attorney fees and all reasonable costs of defending the abusive civil action; and

(3) Impose prefiling restrictions upon any civil action the abusive civil action plaintiff attempts to file for a period of not less than forty-eight (48) months nor more than seventy-two (72) months.

(c) If a civil action defendant alleges that a claim is an abusive civil action or that the plaintiff is an abusive civil action plaintiff, and the court finds by a preponderance of the evidence that the action was not an abusive civil action or that the plaintiff is not an abusive civil action plaintiff, the court may grant to the plaintiff such remedies as may be just, including granting judgment in favor of the plaintiff, granting partial judgment in favor of the plaintiff, or allowing factual interpretations in favor of the plaintiff.

(d) If a civil action defendant alleges that a claim is an abusive civil action or that the plaintiff is an abusive civil action plaintiff, and the court finds by a preponderance of the evidence that the action was not an abusive civil action or that the plaintiff is not an abusive civil action plaintiff, the court may:

(1) Tax all costs related to litigating the issue of whether the action is an abusive civil action or whether the plaintiff is an abusive civil action plaintiff, against the civil action defendant who made the claim; and

(2) Award the civil action plaintiff reasonable attorney fees and all reasonable costs of defending the claim that the action was an abusive civil action or that the plaintiff was an abusive civil action plaintiff.

**29-40-107.**

(a) Except as provided in this section, a person whom a court of record has determined to be an abusive civil action plaintiff and against whom prefiling restrictions have been imposed is prohibited from instituting a civil action against the abusive civil action defendant for the period of time the prefiling restrictions are in effect, or from continuing a civil action that was instituted against the same civil action defendant prior to the date the person was determined to be an abusive civil action plaintiff.

(b) Notwithstanding subsection (a) and consistent with the constitution of Tennessee, Article I, § 17, an abusive civil action plaintiff against whom prefiling restrictions have been imposed may seek permission to file a civil action using the procedure set out in subsection (c).

(c)

(1) An abusive civil action plaintiff against whom prefiling restrictions have been imposed pursuant to this chapter who wishes to institute a civil action in a court of record during the time the abusive civil action plaintiff is under filing restrictions must first appear before the judge who imposed the prefiling restrictions to make application for permission to institute the civil action.

(2)

(A) The judge may examine witnesses, including the abusive civil action plaintiff and the civil action defendant, to determine if the proposed civil action is or is not an abusive civil action and if there are reasonable and legitimate grounds upon which the complaint is based.

(B) There is a rebuttable presumption that any proposed civil action is an abusive civil action if any of the defendants in the proposed action were civil action defendants in one (1) or more of the actions that were the basis for the person being declared an abusive civil action plaintiff.

(3)

(A) If the judge who imposed the prefiling restrictions believes that the civil action the abusive civil action plaintiff is making application to file will be an abusive civil action, the application shall be denied and the judge shall determine a time when the person may next make application to file a civil action.

(B) If the judge reasonably believes that the civil action the abusive civil action plaintiff is making application to file will not be an abusive civil action, the judge may grant the application and issue an order permitting the filing of the civil action. The order shall be attached to the front of the complaint when the abusive civil action plaintiff files the civil action with the clerk. The defendant to the action shall be served with a copy of the order at the same time the complaint is served.

(4) The findings of the judge shall be reduced to writing and made a part of record in the matter. If the abusive civil action plaintiff disputes the finding of the judge, the abusive civil action plaintiff may appeal to the presiding judge of the judicial district of the sanctioning judge. If the sanctioning judge is the presiding judge, the presiding judge shall randomly select two (2) other judges of courts of record in the judicial district to review the findings of the sanctioning judge. If there are not two (2) other judges in the judicial district available, the presiding judge may select a judge from an adjoining judicial district to review the



findings. If the presiding judge or both reviewing other judges believe that the civil action the person is making application to file is not an abusive civil action, the findings of the sanctioning judge are overruled and both judges shall sign an order permitting the filing of the action. The order shall be entered and attached to the complaint and the defendant shall be served with a copy of the order at the same time the complaint is served.

(d) If the application for the filing of a civil action is granted pursuant to this section, the period of time commencing with the filing of the application requesting permission to file the action and ending with the issuance of an order permitting filing of the action shall not be computed as a part of an applicable period of limitations within which the civil action must be instituted.

(e) If after an abusive civil action plaintiff has made application and been granted permission to file a civil action pursuant to this section, the judge with jurisdiction over the action determines that the person is attempting to add parties, amend the complaint, or is otherwise attempting to alter the parties and issues involved in the civil action in a manner that the judge reasonably believes would make the action an abusive civil action, the judge may order a continuance or nonsuit of the action and return it to the presiding judge for further disposition.

(f)

(1) If a civil action defendant is served with a complaint from an abusive civil action plaintiff who filed a civil action in a judicial district in which the person has not been determined to be an abusive civil action plaintiff, and the complaint does not have an attached order from the judge who imposed the prefiling restrictions, the civil action defendant may obtain a certified copy of the order finding the person to be an abusive civil action plaintiff in another jurisdiction and

send it to the judge where the new civil action was filed and the judge who imposed the prefiling restrictions.

(2) If it is brought to the attention of the court, or on the court's own motion, that a person against whom prefiling restrictions have been imposed has filed a civil action or continued a legal proceeding in the sanctioning judge's judicial district, or in another judicial district, without application to do so being granted by the sanctioning judge pursuant to this section, or the abusive civil action plaintiff has attempted to file an action through another party, the court in which the civil action is pending shall dismiss the action or revoke the continuance. The sanctioning judge may take whatever action against the abusive civil action plaintiff deemed necessary for a violation of the court's order.

(3) If an abusive civil action plaintiff against whom prefiling restrictions have been imposed files a civil action and the order granting permission to file the action is not attached to the complaint or served on the defendant, the defendant is under no obligation or duty to respond to the complaint, answer interrogatories, appear for depositions, or any other responsive action required by rule or statute in a civil action.

(g) If the judge who imposed the prefiling restrictions is no longer serving in the same capacity in the same judicial district where the restrictions were placed, any other judge in that judicial district may perform the review required and permitted by this section.

SECTION 2. This act shall take effect July 1, 2018, the public welfare requiring it. Evidence of conduct constituting an abusive civil action under this chapter that occurred prior to the effective date of this act may be used for a motion made pursuant to § 29-40-103(a) on or after the effective date.